

1 COOPER, WHITE & COOPER LLP
2 ROBERT C. GEBHARDT (SBN 48965)
3 rgehardt@cwclaw.com
4 SARAH J. BANOLA (SBN 223812)
5 sbanola@cwclaw.com
6 201 California Street, 17th Floor
7 San Francisco, California 94111
8 Telephone: (415) 433-1900
9 Facsimile: (415) 433-5530

10 Attorneys for Defendants
11 T. CHRISTOPHER JOHNS; and JOHNS AND
12 ALLYN, A.P.C.

13

14

15

16

17

18

19

20

21

22

23

24

25

26

27

28

13 UNITED STATES DISTRICT COURT

14 NORTHERN DISTRICT OF CALIFORNIA, SAN FRANCISCO DIVISION

15

16 MICHAEL DeMARTINI and RENATE
17 DeMARTINI,

18

19 Plaintiffs,

20

21 v.

22

23 THOMAS CHRISTOPHER JOHNS; JOHNS
24 & ALLYN, A.P.C.; and DOES 1 TO 30,
25 inclusive.,

26

27 Defendants.

28

13 CASE NO. 3:12-CV-03929-JCS

14
15 DECLARACIÓN OF ROBERT C.
16 GEBHARDT IN SUPPORT OF MOTION
17 TO REOPEN CASE AND VACATE
18 ARBITRATION AWARD

19 Judge: Magistrate Judge Joseph C. Spero

20 Date: November 21, 2014

21 Time: 9:30 a.m.

22 Courtroom: G

1 I, Robert C. Gebhardt, declare as follows:

2 1. I am an attorney duly admitted to practice before this Court. I am a partner with
 3 Cooper, White & Cooper LLP, attorneys of record for Defendants T. CHRISTOPHER JOHNS
 4 and JOHNS AND ALLYN, A.P.C. (hereinafter, "Respondents"). If called as a witness, I could
 5 and would competently testify to the facts stated herein which are based on my personal
 6 knowledge except where stated upon information and belief.

7 2. I was principal counsel representing Respondents in regard to malpractice cross-
 8 claims brought by Michael and Renate DeMartini ("Claimants" or the "DeMartinis") in
 9 malpractice arbitration proceedings pending before Arbitrator Carol J. Marshall, Esq. of the
 10 American Arbitration Association ("AAA") in San Francisco, AAA Case No. 7419448513 S1M.
 11 The cross-claims were filed in response to AAA arbitration initiated by Respondents to collect
 12 unpaid legal fees, AAA Case No. 74434E0014413. The cross-claims for malpractice were severed
 13 from the fee claim and heard in a bifurcated arbitration proceeding. Unless otherwise stated, the
 14 exhibits described in and attached to this declaration relate to the subject malpractice arbitration
 15 proceeding and award that Respondents challenge in this motion to reopen and vacate.

16 3. Attached hereto as Exhibit 23¹ is a true and correct copy of Michael and Renate
 17 DeMartini's Cross-Claims for Negligence, Breach of Contract, Breach of Fiduciary Duty, Breach
 18 of Confidence, Environmental Interference, and Locale, dated June 24, 2013.

19 4. Attached hereto as Exhibit 24 is a true and correct copy of Johns & Allyn, A.P.C.
 20 and T. Christopher Johns's Memorandum of Points and Authorities in Support of Motion for
 21 Summary Judgment, or in the Alternative, Summary Adjudication, filed on October 25, 2013.

22 5. Attached hereto as Exhibit 25 is a true and correct copy of the Order re: Summary
 23 Judgment Motion, dated January 8, 2014.

24 6. Attached hereto as Exhibit 26 are true and correct copies of pertinent excerpts to
 25 the reporter's transcript of proceedings, taken on January 16, 2014 in the bifurcated fees arbitration

26
 27 28 ¹ The exhibits to this declaration are being numbered consecutively following the exhibits to the
 Declaration of Thomas Christopher Johns in Support of Motion to Reopen Case and Vacate
 Arbitration Award.

1 proceeding before Arbitrator Marshall, AAA 71940014413.

2 7. Attached hereto as Exhibit 27 is a true and correct copy of Johns & Allyn, A.P.C.
3 and T. Christopher Johns's Pre-Hearing Position Statement, filed on January 22, 2014.

4 8. Attached hereto as Exhibit 28 are true and correct copies of pertinent excerpts to
5 the deposition of Michael DeMartini, taken on March 11, 2014, and admitted into evidence as
6 exhibit 8 on March 28, 2014 in the malpractice arbitration proceeding. True and correct copies of
7 the pertinent excerpts to the March 28, 2014 reporter's transcript of proceedings admitting exhibit 8
8 are also attached hereto as Exhibit 28.

9 9. Attached hereto as Exhibit 29 are true and correct copies of pertinent excerpts to
10 the reporter's transcript of proceedings, taken on March 26, 2014.

11 10. Attached hereto as Exhibit 30 are true and correct copies of pertinent excerpts to
12 the reporter's transcript of proceedings, taken on March 27, 2014.

13 11. Attached hereto as Exhibit 31 are true and correct copies of pertinent excerpts to
14 the reporter's transcript of proceedings, taken on April 24, 2014.

15 12. Attached hereto as Exhibit 32 is a true and correct copy of Cross-Respondents'
16 Arbitration Closing Brief, filed on June 1, 2014.

17 13. Attached hereto as Exhibit 33 is a true and correct copy of the arbitration Award,
18 dated July 30, 2014, and submitted to the parties via email on July 31, 2014. The amount of the
19 Award exceeds \$75,000.

20 14. AAA appointed Arbitrator Marshall, as the arbitrator for the bifurcated fees
21 arbitration. She also agreed to serve as the arbitrator for the bifurcated malpractice arbitration and
22 no party objected. Attached hereto as Exhibit 34 are true and correct copies of correspondence
23 relating to the appointment of Arbitrator Marshall in the fees and malpractice arbitration.

24 I declare under penalty of perjury under the laws of the state of California that the
25 foregoing is true and correct.

Executed on September 4, 2014 at San Francisco, California.

Robert C. Gebhardt